

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	John Brownlie)	Examiner: Unknown
)	
Serial No.:	10/522,513)	Art Unit: 1653
)	
Filed:	January 27, 2005)	
)	
I.A. Filing Date:	July 1, 2003)	
)	
CANINE RESPIRATORY CORONAVIRUS (CRCV)	
SPIKE PROTEIN, POLYMERASE AND)	
HEMAGGLUTININ/ESTERASE)	

Mail Stop: Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF DECISION ON PETITION TO

WITHDRAW HOLDING OF ABANDONMENT

Sir:

For the reasons set forth below, Petitioner respectfully requests reconsideration of the Decision On Petition to Withdraw Holding of Abandonment dated Aug. 25, 2006 in the above-identified application.

As stated at MPEP 711.03(c):

"To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office

action. The showing required to establish nonreceipt of an Office communication must (1) include a statement from the practitioner stating that the Office communication was not received by the practitioner and (2) attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. (3) A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action." (Numerals 1, 2 and 3 added for emphasis).

Petitioner believes it has made the required showing of items 1, 2 and 3 as outlined in the above passage. More particularly, Petitioner has:

- 1) included a statement that the Office Action was not received by the Practitioner, to wit:

"A search of the file jacket and docket record for the subject application indicates that said Notification was never received by the Attorneys of Record, Jaeckle Fleischman & Mugel, LLP (JFM)." (see p. 2, 1st ¶ of Petition).

Petitioner is therefore at a loss as to why Attorney Advisor Ms. Kratz states in the Decision: "Counsel has not satisfied Item (1) because he has not stated that the Office action was not received by the practitioner." (See p. 2 3rd ¶ of Decision).

To reiterate, Practitioner did not receive the Office Action dated Feb. 7, 2006 until it was faxed to the Practitioner by the PCT Help Desk on May 25, 2006 at the request of Practitioner. A copy of the fax cover sheet from the PCT Help desk was provided with the Petition as evidence thereof.

Petitioner therefore believes a proper showing of item #1 has been made.

Petitioner has furthermore:

- 2) included a statement that a search of the file jacket and docket records indicates that the Office communication was not received. (See passage from the Petition in #1 above).

Advisor Kratz states that what is required is "a search of the file jacket and a search of the *firm's* docket records." (emphasis added).

Advisor Kratz has apparently drawn a distinction between the docket records for the subject application and all the docket records of the firm. Petitioner assumes that when Advisor Kratz refers to the docket records of the firm, she means docket records for all applications the firm is handling, not just the docket record for the instant application which Petitioner provided with the Petition. Petitioner asserts this distinction is not merited and that the docket report dated May 25, 2006 of the instant application, which was submitted with the Petition and referred to by

Petitioner in the Petition, is sufficient to show a search of the docket records as required by the rules.

More particularly, the rules do not make this distinction - the rule simply states "docket records" with no qualification as to whether those docket records are of all applications during a particular time period, or just the subject application. Furthermore, JFM's docketing system does not allow one to go back in time to recreate a docket record of all applications being handled by a particular attorney as it would have been generated at a given date in the past. This is because as correspondence is received and docketed, the docket database is being continuously updated.

While Petitioner does receive monthly printed docket reports, these are shredded once the next report is issued. Petitioner therefore would have shredded the March 2006 docket report in April 2006. What Petitioner does have is the entire docket record for the instant application that was generated on May 25, 2006, the day Petitioner discovered through the PAIR system that a Notice had issued on this application on Feb. 7, 2006. This docket report was attached to and referenced in the Petition and is reproduced below for ready reference.

Country Application		Thursday, May 25, 2006		Page: 1
<u>List Of Actions</u>				
Actioned Due	Due Date	Due Date	Action Taken	
Publication	27-Jan-2004	Due Date	05-Feb-2004	
Filing Due	27-Jan-2005	Due Date	27-Jan-2005	
Post Card Check	27-Feb-2005	Due Date	14-Feb-2005	
Rule 56 Letter	27-Feb-2006	Due Date	27-Apr-2005	
Filing Receipt Check	27-Apr-2005	Due Date	27-Apr-2006	
Information Disclosure Sheet	27-Apr-2005	Due Date	18-Nov-2005	
Assignment Submittal	27-Nov-2005	Due Date	11-Nov-2005	
Missing Parts	26-Nov-2005	Due Date	21-Nov-2005	
Missing Parts w/1 mo ext	26-Dec-2005	Due Date	21-Nov-2005	
Drawings?	27-Dec-2005	Due Date	27-Jan-2006	
Missing Parts w/2 mo ext	26-Jan-2006	Due Date	23-Nov-2005	
Missing Parts w/3 mo ext	26-Feb-2006	Due Date	21-Nov-2005	
Missing Parts w/4 mo ext	26-Mar-2006	Due Date	21-Nov-2005	
Missing Parts w/5 mo ext	26-Apr-2006	Due Date	21-Nov-2005	
Assignment Recalculation req'd?	21-May-2006	Due Date	21-Nov-2005	
Filing Receipt Check	21-May-2006	Due Date		
Application Status Check	23-Jul-2006	Due Date	23-May-2006	
Application Status Check	23-Nov-2006	Due Date		

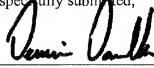
As can be seen, the docket report does not contain the Feb. 7 2006 Notice, nor does it contain a due date for response or a reply to the Notice within the month following Feb. 7, 2006. Since this docket report shows all docket entries and calculated reply due dates for the instant application as of May 25, 2006, if Petitioner had received the Feb. 7, 2006 Notice, it would have appeared as a docket entry on the docket report of May 25, 2006 at the location indicated by the arrow above. However, since it does not appear on that docket report, Petitioner can assert to the fact that the Notice had not been received by Petitioner as of May 25, 2006. This is why there is also (as logic would dictate) no reply docketed within the month following Feb. 7, 2006. This should more than satisfy the required showing "(2) that a search of the file jacket and docket records indicates that the Office communication was not received," as well as "(3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement."

Petitioner therefore believes a proper showing of items 1, 2 and 3 has been made.
Accordingly, reconsideration and grant of the Petition filed on June 2, 2006 is respectfully
requested.

It is believed that no fee is required for this Petition; however, the Commissioner is
hereby authorized to charge any additional amount required, or credit any overpayment, to
Deposit Account No. 10-0223.

Date: 9-11-06

Respectfully submitted,



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